IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 64 OF 2000

Chimanlal Vithaldas Panchal,]
Block No.502/B, Natraj Apartments,]
Padwal Nagar, Panch Parmeshwar Temple Rd;]
Wagle Estate, Thane – 400 604.] .. Appellant (In Jail Custody)

Versus

The State of Maharashtra,]
through: Public Prosecutor, High Court,]
Mumbai.] .. Respondents

Ms. Pooja Bhojane - Appointed Advocate for the appellant/accused.

Mrs. Usha V. Kejriwal, A.P.P., for the respondent-State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 20TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. This is an Appeal by the appellant-accused against the order of conviction dated 25th January, 2000, by which the appellant has been convicted

for offence punishable under Section 302 by the Additional Sessions Judge and sentenced to suffer rigorous imprisonment for life and also to pay fine in the sum of Rs.10,000/- and in default, to suffer rigorous imprisonment for two years.

2. The crime was registered against all the four accused. Appellant is the original accused No.1. By the impugned judgment, accused No.2 Dashrath was acquitted for the same offence. Accused Nos.3 and 4 viz. Pravin and Kanaiyalal aged 12 and 14 years respectively, being juvenile, were discharged by the High Court order dated 16th October, 1986, in a Petition under Section 482 of the Criminal Procedure Code.

3. There was no eye witness in the matter. The prosecution has examined 7 witnesses. PW1 – Laxmi Rajaram Godan, PW2 – Dr. Ghanshyam Daulatram Bhatiya, PW3 – Dr. Kumar Dattatraya Manaware, PW4 – Keshavlal Atmaram Panchal, PW5 – Dr. Prashant Eknath Shimpi, PW6 -Rosario Ferrao John and PW7 – PSI Keshav Vasudeo Sarang. The documentary evidence relied by the prosecution includes panchanama of the dead body, medical reports, post mortem reports, letters of the Additional Coroner, Cooper hospital and related panchanama with related testimony. No oral evidence was led on behalf of the defence.

4. The learned Sessions Judge held that Hemlata Chimanlal Panchal (hereinafter referred to as "the deceased") met with homicidal death on 18th May, 1985, in between 9.30 a.m. to 11.00 a.m., in Room No.19, on the 4th floor, in Building No.X-64, situated at Godrej Employees Colony at Vikhroli (East), Mumbai. It is also held that the complaint made by Keshavlal dated 22nd September, 1985, marked as Exhibit-18 & 18-A, cannot be treated as FIR. The learned Judge, on the same material and evidence, acquitted the accused No.2. However, he convicted the accused No.1, the husband of the deceased.

5. The appellant was married to the deceased about one and half years prior to the incident dated 18th September, 1985. The appellant had three brothers viz. Dashrath – accused No.2, aged 17 years, Pravin – accused No.3, aged 14 years and Kanaiyalal – accused No.4, aged 12 years. Vitthaldas and Mitaben are their parents. This joint family resides in small one-room kitchen block in question. On 18th September, 1985, between 9.30 a.m. to 11.00 a.m., as alleged, Chimanlal and his three brothers, in furtherance of their common intention to commit murder of the deceased, poured kerosene on her body and set her on fire. Dashrath (accused No.2), the brother of accused No.1 went to the Police Station at Vikhroli and reported to the Station Officer Shri K.V. Sarang

that his *Bhabi,* Hemlata, died due to burned injuries in the kitchen. The said Officer made entry in the Diary and after permission from higher authorities, reached to the spot. He found the dead body of Hemlata in the kitchen room and burn injuries all over her. He called two Panch witnesses and made the panchanama of the body and the scene of offence. The dead body was sent to the Coroner's Court at Cooper Hospital for the purpose of post mortem. The statements of neighbours were recorded on 18th September, 1985, itself. On 19th September, 1985, Vithaldas father of Chimanlal went to inform the father of the deceased named Keshavlal - PW7. After his arrival at Mumbai, he was taken to the Vikhroli Police Station. His statement was recorded on 20th September, 1985. No grievance or complaint was made by the Keshavlal against the husband Chimanlal or the in-laws in respect of the death of his daughter, Hemlata. He also identified the dead body. The body as thereafter sent for post mortem. On 20th September, 1985, the body of Hemlata was cremated as per Hindu rites. The Investigating Officer made his Report to the Coroner' sCourt to the effect, that the death of Hemlata was “accidental”. The muddemal properties were also destroyed, including the stove and the burnt pieces of clothes found on the dead body of Hemlata. The Report was made accordingly.

6. However, on 22nd September, 1985, the father of the deceased –

Keshavlal lodged a complaint stating that on enquiries from the neighbours he learnt that his daughter Hemlata was burnt by her husband and her in-laws. The Police had recorded the said FIR and registered the crime as C.R. No.185/85 on 25th September, 1985. The accused Nos.1 and 2 were arrested on 25th September, 1985 and 26th September, 1985 respectively. The statements of the neighbours were again recorded and the charge sheet was accordingly prepared against all the four brothers. The minor brothers Pravin and Kanaiyalal were tried separately by the Juvenile Court at Dongri. These two minors had challenged the said proceedings by invoking Section 482 of the Criminal Procedure Code. The said proceedings against them were quashed. They were accordingly discharged by the order of the High Court dated 16th October, 1986. The accused pleaded “not guilty”. There defence was that it being Ganpati festival day, accused Nos.1 and 2 had gone to watch the Ganpati procession at the public place. The other two minors were playing with their friends in the compound of the building. Deceased Hemlata was alone in the kitchen and her nylon saree might have caught fire while heating the water for the bath. She was burnt about 95% because of the fire. The younger brothers – original accused Nos.3 and 4, heard the noise. The accused Nos.1 and 2 reached and were shocked to see her in flames. Accused No.1 got confused. He lifted the water pot and thrown the water on her, but in vain. She cried and collapsed. The

parents also returned from the market and were shocked to see her dead body. The accused No.1 and his father, therefore, rushed to PW2 - Dr. Bhatiya who was staying in the same Colony. Dr. Bhatiya visited their house immediately. After inspection, he declared Hemlata dead. In the meanwhile, accused No.2 rushed to Vikhroli Police Station and reported the incident to the Station Officer. The Station Officer accordingly visited the spot and prepared the panchanama, as stated earlier.

7. We have heard the Advocates and their arguments based on the Memo of Appeal filed on the record. The Public Prosecutor supported the case of the prosecution. We have re-appreciated and re-weighed the oral testimony and the material placed on the record. After going through the same, we are of the view that the prosecution failed to make out a case to maintain the order of conviction, as imposed in the present case. According to us, as admittedly there is no eye witness, the conviction, based on the circumstantial evidence, is not sufficient to figure out the accused No.1/appellant herein as a guilty person with a guilty mind.

8. The Medical Officers definitely proved the death of the deceased, because of 95% burn injuries. There is no much quarrel so far as that part is

concerned. In the present case, what is important is that at first investigation and/or after initial statements, there was no whisper or complaint against all the accused. The incident took place on 18th September, 1985. The dead body was cremated on 20th September, 1985, when the father of the deceased was also present. PW-7 PSI Sarang, as pointed out, in fact, had disposed of the muddemal properties. In a way, the case was totally closed. However, on 22nd September, 1985, the FIR was lodged by the father of the deceased and re-investigation commenced and that resulted into conviction of the appellant No.1 only.

9. In absence of any direct evidence, the complaint of the father, 4-5 days after the incident, nowhere supports the prosecution case. The father, even after due enquiry, as alleged, might have got the information from the neighbours to suggest and/or to make the accused liable for the death of his daughter. However, there is no substantial material to justify the filing of the said complaint after 4 days from the date of the incident. The learned Additional Sessions Judge, based on the earlier incidents and/or the material collected against the husband of the deceased, of his earlier marriages, came to the conclusion that the appellant might have committed this murder by pouring kerosene over Hemlata and by setting her on fire. There is no material to support the same,

except the bare allegation by the father of the deceased. There is no supporting material or evidence of the neighbours. The unnatural death of the deceased itself cannot be the reason to convict the appellant-accused/husband. There are lacunas in the prosecution' scase, specially when the complainant, father of the deceased, initially, admittedly did not lodge any complaint or made any grievance against the accused and, therefore, cannot be relied upon to convict the accused No.1. As already pointed out, accused Nos.3 and 4 were already discharged from the same case. By the impugned judgment, the learned Additional Sessions Judge, in fact, acquitted the accused No.2. The appellant, being the husband of the deceased, is the only person held responsible for committing such a heinous crime.

10. The complaint made by Keshavlal (Exhibit-18) dated 22nd September, 1985, has not been treated as an FIR by the learned Additional Sessions Judge. The statement was recorded on 25th September, 1985, and thereafter his complaint dated 22nd September, 1985, marked as Exhibit-18 & 18-A had been registered. Therefore, the statement of PW4 – Keshavlal, being based on the information received from third persons is definitely a hear-say evidence as contemplated under Section 60 of the Evidence Act. Therefore, such a statement would raise various doubts and suspicions and it is difficult to consider

the same as a basic document to convict any person. This statement, in fact, is not admissible under Section 60 of the Evidence Act. However, this statement was considered to be an information which is requisite for Section 154 of the Criminal Procedure Code. As the complaint was made on 22nd September, 1985, after a; lapse of four days and the prosecution proceeded. Therefore, the basic lacuna of filing or lodging information after more than four days and to proceed on the basis of such statement or information, without proper explanation, it is improper to convict a person on the basis of such a complaint. Such information or statement always raises various doubts. Such information or complaint cannot be said to be reliable and final.

11. Now what remains is the conviction order as passed in the present case, based on the circumstantial evidence. The principle of circumstantial evidence is laid down by the Apex Court in *Sonappa Vs. State of Mysore* **AIR 1979, S.C., 1834.** The prosecution had failed to place on the record and/or prove sufficiently, that all the accused were present at the relevant time on the spot of the incident. As we are concerned with accused No.1, the prosecution further failed to prove that he was the person who committed this offence by pouring kerosene on the deceased and setting her on fire. There is nothing on the record which suggests or supports the case of the prosecution that accused No.1

was present inside the house at the time of the incident. As already observed, the prosecution has failed to prove the presence of accused No.2 inside the house at the time of the incident. In the same evidence, the prosecution has failed to bring on the record, any incriminating evidence against the accused No.1 and/or his involvement. The involvement of accused No.1, based on the circumstantial evidence, is unjustified. The observation by the learned Additional Sessions Judge that the accused No.1 had poured kerosene on his wife is based on the surmises and conjectures. Merely because the whole body or clothes of the victim were soaked in kerosene oil and the spot panchanama also supports the same, that would not link the commitment of the offence by accused No.1. Merely because the victim did not run out of the kitchen as her clothes caught fire and sensing danger of life, that by itself would not mean that the accused No.1 was present and he prevented her from going out. It is difficult to accept for want of connecting evidence, that the accused No.1 was present and he prevented the deceased from going out of the kitchen and in the process, he burned his left hand. The spot panchanama (Exhibit-24) nowhere supports the case of the prosecution that she was held and prevented by the accused No.1 at the entrance door of the kitchen as observed by the learned Additional Sessions Judge. All these incidents in no way prove the case of the prosecution beyond reasonable doubt that accused No.1 had participated in pouring kerosene on his

wife while she was sitting on the floor of the kitchen. That he intentionally and knowingly killed her and he prevented her from coming out of the kitchen by his left hand and consequently, due to suffocation, she collapsed inside the kitchen and died due to 95% burn injuries. The defence case of *alibi* was totally disbelieved by the Sessions Court. There is ample evidence that the accused No.1 rushed towards the spot and poured water also, but could not save her.

12. The deceased was the fourth wife of the accused No.1 and, therefore, the evidence of PW2 – Dr. Bhatiya was believed as he had deposed that the appellant had got his earlier wives treated in the same hospital. The fact that his earlier wives had deserted the appellant, also impacted on the mind of the learned Sessions Judge and he came to the conclusion that the appellant must have treated his earlier wives with cruelty and, therefore, he must have also treated the deceased with cruelty and committed the murder.

13. PW4 – Keshavlal, father of the deceased initially on the day of the incidence or immediately after reaching the spot of even during the process of cremation, could have or should have raised this issue. On the contrary, it was recorded that there was no complaint made against any of the accused. The present complaint was filed on 22nd September, 1985. The prosecution failed to

bring on the record, any testimony of any neighbours to support their case. It is to be noted that the whole occurrence took place inside the kitchen room during the day-time and no one heard the cries raised by the deceased and/or noted the presence of the accused on the spot.

14. The learned Additional Sessions Judge has wrongly convicted the accused by observing further that the appellant-husband might not have taken any steps or efforts to extinguish the burning flames of the clothes of his wife and the water was subsequently poured to wash away the smell of kerosene oil. The learned Additional Sessions Judge also doubted the absentee of the father and the mother of the accused and the other accused. The testimony of all other witnesses nowhere supports the prosecution's case. According to us, the prosecution failed to prove the guilty mind and the guilt of the accused. There are various doubts and suspicious circumstances which are dis-linking the circumstantial evidence. On the basis of such weak evidence, we are of the view that the order passed by the learned Additional Sessions Judge, of convicting the appellant, is not correct. The order of conviction is accordingly quashed and set aside.

15. The Appeal is, therefore, allowed. The appellant-accused, if not

needed for any other offence, be released forthwith.

16. We quantify the fees to be paid to the Advocate appointed for the appellant and the learned A.P.P. at Rs.1,500/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]